

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

In the Matter of)
)
Interconnection and Resale Obligations)
Pertaining to)
Local Exchange Carrier Provision of)
Commercial Mobile Radio Services)

FEB 13 1997

FEDERAL COMMUNICATIONS COMMISSION

CC Docket No. 94-54

OPPOSITION TO PETITIONS FOR RECONSIDERATION

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its opposition to the Petitions for Reconsideration filed by Nextel Communications, Inc. ("Nextel") and the American Mobile Telecommunications Association, Inc. ("AMTA") of the Commission's Second Report in the above-captioned proceeding.^{1/}

Relying on the repudiated argument that technological distinctions between wide-area SMR systems and the systems of other CMRS providers entitle those SMR providers to be relieved of CMRS obligations, the petitioners seek exemption from roaming requirements based on the absence of an in-network switching facility in certain SMR systems. Nextel and AMTA argue that their SMR operations should be excused from the regulatory burdens imposed on other CMRS providers because their systems do not "support the channel reuse

^{1/} Interconnection and Resale Obligations Pertaining to Local Exchange Carrier Provision of Commercial Mobile Radio Services, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, FCC 96-284 (rel. Aug. 15, 1996) ("Roaming Second R&O"); see 62 Fed. Reg. 4287 (Jan. 20, 1997) (opposition and reply deadlines).

and mobile handoff capability that enable cellular and PCS operators to target a consumer-oriented, mass market."^{2/}

The Commission considered and rejected these very arguments in its order implementing the 1993 Budget Act.^{3/} The Commission concluded that "any wide-area SMR that intends to offer for-profit interconnected service" would be classified as a CMRS carrier and subject to all regulations applicable to CMRS carriers.^{4/} The Commission noted that its "decision whether to classify SMRs as PMRS or CMRS will not turn on system capacity, frequency reuse, or other technology-dependent aspects of system operations."^{5/}

As the Commission recognized, ascertaining regulatory status by reference to system capacity "could create disincentives to employ new capacity-enhancing technologies"^{6/} Indeed, adopting the petitioners' proposals would simply encourage carriers to avoid common

^{2/} Petition for Reconsideration of American Mobile Telecommunications Association, Inc. at 5 (filed Sept. 26, 1996) ("AMTA Petition"); see Petition for Reconsideration and Clarification of Nextel Communications, Inc. at 8-9 (filed Sept. 26, 1996). Notwithstanding the impression left by Nextel's and AMTA's Petitions, it appears that wide-area SMR operators are clearly targeting the "consumer oriented, mass market" served by cellular operators. See Gautam Naik, 'New' Nextel Cuts Wireless Roaming Rate, WALL ST. J., Jan. 14, 1997, at B1.

^{3/} Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order, 9 FCC Rcd 1411, 1450-51 (1994) ("CMRS Second R&O"). In that proceeding, Nextel and others had argued that "functional equivalence" should be determined based on whether the service utilizes frequency reuse or other existing commercial mobile service technologies. See id. at 1473. In many respects, the instant petitions appear to be untimely attempts to reargue the Commission's decision in the CMRS Second R&O. See 47 U.S.C. § 405 (petitions for reconsideration must be filed within 30 days of public notice of order complained of); 47 C.F.R. § 1.429(d) (1995) (same).

^{4/} CMRS Second R&O, 9 FCC Rcd at 1451.

^{5/} Id.

^{6/} Id. (quoting Telocator Comments at 12).

carrier regulation by developing alternative technological means to offer services that are comparable to commercial mobile services.^{7/}

The Commission has determined that wide-area SMR licensees that provide interconnected service will be classified and regulated as CMRS providers.^{8/} Once classified as such, an SMR carrier's individual determination to use switching technology should be entirely irrelevant to whether it is subject to the same regulatory treatment as other CMRS providers.^{9/} Creating artificial exceptions based on temporary or self-imposed restrictions would defeat Congress's intent to assure regulatory parity among comparable wireless services and would require the Commission to reevaluate continuously the regulatory classification of developing services.^{10/}

^{7/} See Reply Comments of McCaw Cellular Communications, Inc., GN Docket No. 93-252, at 25-26 (filed Nov. 23, 1993).

^{8/} CMRS Second R&O, 9 FCC Rcd at 1451.

^{9/} To the extent that there is any merit to Nextel's argument that manual roaming is a technical impossibility, Nextel and similarly situated carriers could apply for a waiver on a system-by-system basis. See 47 C.F.R. § 1.3 (1995).

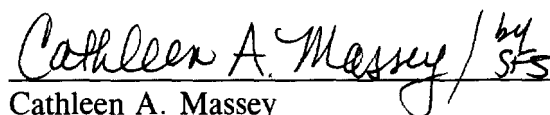
^{10/} The interpretive difficulties and administrative burden inherent in relieving SMR systems that lack an "in-network switching facility" from CMRS obligations is illustrated by AMTA's proposal that local SMR systems that "incorporate a PBX-like 'switch'" should also be exempt from roaming obligations. AMTA Petition at 6 n.7. Under the regime advocated by AMTA, the presence of certain in-network switching facilities would give rise to roaming obligations whereas others would not.

CONCLUSION

For the reasons set forth above, the Commission should deny Nextel's and AMTA's Petitions for Reconsideration of the Roaming Second R&O.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

 Cathleen A. Massey / *by sfs*

Cathleen A. Massey
Vice President - External Affairs
Douglas I. Brandon
Vice President - External Affairs
1150 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
202/233-9222

Howard J. Symons
Sara F. Seidman
Gregory R. Firehock
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
202/424-7300

Of Counsel

February 13, 1997

F1/63471.1

CERTIFICATE OF SERVICE

I, Cheryl Flood, do hereby certify that on this 13th day of February, 1997, I caused a copy of the foregoing "Opposition to Petitions for Reconsideration" of AT&T Wireless Services, Inc. to be delivered by messenger (*) or first class mail to the following:


Cheryl Flood

Jeffrey Steinberg*
Policy Division
Federal Communications Commission
2025 M Street, N.W., Room 5126
Washington, D.C. 20554

Julius Genachowski*
Chief Counsel
Office of Chairman Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Michele C. Farquhar*
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rudy Baca*
Senior Legal Advisor
Office of Commissioner Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

David Furth*
Chief
Commercial Wireless Division
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Suzanne Toller*
Legal Advisor
Federal Communications Commission
Office of Commissioner Chong
1919 M Street, N.W., Room 844
Washington, D.C. 20554

International Transcription Service*
2100 M Street, N.W., Room 140
Washington, D.C. 20037

David Siddall*
Federal Communications Commission
Office of Commissioner Ness
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Rita McDonald*
Federal Communications Commission
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036

Robert S. Foosaner
Senior Vice President - Government Affairs
Nextel Communications, Inc.
800 Connecticut Avenue, N.W., Suite 1001
Washington, D.C. 20006